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CASE NO. 89 - 342

Supreme Court, U.S.
FILED
OCT 26 1990
JOSEPH F. ...
CLERK

in the

SUPREME COURT

of the

UNITED STATES

October Term, 1989

WILSON ROBERT SHERMAN,

Petitioner,

vs.

NISSAN MOTOR CORPORATION IN U.S.A.
and NISSAN MOTOR CO., LTD.

Respondent.

REBUTTAL TO BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Where there is an immediate and tragic danger to those individuals that operate automobiles equipped with a defective steering lock system that can prevent the steering wheel from being turned while the automobile is moving, there is definite cause for consideration by the United States Supreme Court to bring about a decision that would eliminate this hazard and thus protect the public from such hazard.

1. Does "Special and important reasons", within the rule relating to granting of certiorari, relate to problems beyond the academic or episodic, especially where issues have an adverse effect and impact on the health, safety, and welfare of the people in our nation?

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The Court faces the problem of jurisdiction to consider this Petition For Writ of Certiorari. Rule 17.1 of the Rules of the Supreme Court of the United States provides that a Writ of Certiorari, "will be granted only when there are special and important reasons therefor." Rule 17.1 further states that considerations for such a rule "...neither controlling nor fully

measuring the Court's discretion, indicate the character of reasons that will be considered. Public safety is a paramount special and important reason.

FACTS RELATING TO ARGUMENT

On 25 November 1981 Wilson Robert Sherman (Sherman) was driving a borrowed Datsun 280Z with his fiance, Julie Lynn Riess, as his passenger. The Car struck a Eucalyptus tree on the North side of New Place Road in Hillsbourgh, Califonria. Miss Riess was killed on impact. Sherman was hospitalized with extreme injuries.

Sherman was placed under arrest at 1:10 a.m. on 25 November 1981 at Peninsula Hospital for Manslaughter (California Penal Code SS 192.3). This was forty-five (45) minutes after the estimated accident time of 12:25 a.m. Sherman should not have been cited until a complete and thorough investigation by the Hillsborough Police Department (HPD). These charges were based

on speculation by the officers that Sherman was speeding and drunk-driving due to their detection of a "slight scent of alcohol" on his breath.

The HPD police report stated that the ignition key was missing from the automobile right after the accident.

An alcohol blood test was given without Sherman's knowledge, at the accident sight which resulted in a .09 alcohol level reading. In 1981, .09 was below the legal limit, therefore, Sherman could not be prosecuted for drunk driving.

An investigation by the California Highway Patrol of the Accident was requested as a cursory study. It was determined that the speed of the car before the lockup was 33 mph. Thus disproving the HPD's speculation of speeding. The M.A.I.T. Team of the CHP, was confined by the HPD to a "limited report" thusly not

allowing them to follow up suspicions of mechanical malfunction.

All testimony regarding the mysteriously missing ignition key was refused to be submitted by the Court at the trial.

The burglar alarm, which was located in the glove box of the automobile also mysteriously disappeared while the automobile was in complete control of the HPD. The burglar alarm was hypothesized as one reason for inadvertent lock-up.

Sherman was in a semi-conscious state for five (5) days after the accident. He had suffered extensive injuries, including a broken shoulder, a sprained neck, a punctured lung and a severe concussion. Contrary to the testimony of Dr. Levin and Dr. Gallo, Sherman did, in fact, receive an extreme blow to his upper right forehead, rendering him unconscious. One of these doctors did, in fact, even stitch the

wound. Mr. Sherman has many witnesses that can testify he was unconscious for several days. He has no memory of the accident.

There was a Hillsborough City Council meeting that focused on HPD police chief's negligence while handling the matters in connection with Sherman's accident. There are an array of false and misleading facts and conduct that are in conjunction with this entire case.

ARGUMENT

No law suit was ever filed by Mr. Reiss against Mr. Sherman, but on the contrary, Mr. Riess joined forces with Sherman against Nissan. Mr. Riess settled with Respondent and is no longer involved in this action.

On 20 October 1989 the Superior Court of California, County of Los Angeles, case number 048971, under Judge Richard Adler, found Robert Swanson, the attorney repre-

senting Sherman during the appellate phase of this case responsible for misrepresentation and malpractice, thusly, awarding Sherman the return of all fees and applied interest. This decision shows a major contributing cause to the faulty procedural aspects that were incurred at the appellate level of this case and should be considered by this Court in reference to the "special and important reasons" as outlined in rule 17.1 of the Rules of the Supreme Court of the United States.

Contrary to statements in Respondent's brief, Dave Schmidt theorized steering lock-up to be the cause of the accident from his initial inspections and tests back in 1982. Over the years, Mr. Schmidt has stengthened his findings in the matter.

As far as Respondent's expert witnesses' testimony they were simply paid to express Nissan's opinion.

Finally, Respondent claimed that Mr. Sherman had a "vendetta" against Nissan, and had even stated it publically. This is unfounded and untrue. Quite the contrary, Mr. Sherman has spent approximately 8 years in an humanitarian effort to rectify this defect.

Respondent's strategy has been to cloud and confuse the issue of their lethal defect with unrelated insignificant and spurious asides.

CONCLUSION

The focus of this case in reference to a defective anti-lock mechanism and the impact this has on public and national safety are established and indisputable. The breach of public safety in regards to this matter is definitely of constitutional proportions and should be compelling enough as a special and important reason for the Court to grant review of this Writ

of Certiorari.

Furthermore, due to the NATIONAL EMERGENCY caused by this lethal defect, we request that the Court will rule that Respondent, Nissan, must engage in a vast public awareness campaign to alert and warn the nation about the extreme hazard of inadvertent lock-up, immediately.

For the purpose of sparing lives of many innocent people we pray that the United States Supreme Court will enact this verdict forthwith.